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In the Supreme Court of the United States

OCTOBER TERM, 1945

UNITED STATES OF AMERICA, PETITIONER

v.

ISKA W. CARMACK

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 812

UNITED STATES OF AMERICA, PETITIONER

v.

ISKA W. CARMACK

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment entered in this case, on November 6, 1945, by the United States Circuit Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The first opinion of the circuit court of appeals is reported in 135 F. 2d 196. The memorandum opinion of the district court after remand (R. 600–618) is reported in 55 F. Supp. 555. The second opinion of the circuit court of appeals (R. 658) is reported in 151 F. 2d 881.

JURISDICTION

The judgment of the circuit court of appeals was entered on November 6, 1945 (R. 665). The

jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether, under a statute authorizing the Federal Works Administrator, acting jointly with the Postmaster General, to condemn for post offices such sites "as he may deem necessary," a petition to condemn property already devoted to public use may properly be dismissed on the grounds that, in the opinion of the court, the selected site is not necessary for the public project because other sites are available, condemnation of the selected site will interfere with local governmental functions, and the property is held in trust for the specific purpose to which the land is being devoted.

2. Whether, under the facts of this case and particularly in the light of the approval of local public officials and a majority of local voters, the selection as a site for a federal post office of property used for a city park and courthouse was arbitrary and capricious.

3. Whether a taxpayer, property owner, and heir of the grantor to the city of the property sought to be condemned, has standing to object to the taking when she has no property interest in the land.

STATUTE INVOLVED

Section 1 of the Act of May 25, 1926, c. 380, 44 Stat. 630, as amended by the Act of July 1, 1939, 53 Stat. 1426, 1427, 40 U. S. C. 341 provides, in part:

> To enable the Federal Works Administrator to provide suitable accommodations in the District of Columbia for the executive departments, and independent establishments of the Government not under any executive department, and for courthouses, post offices, immigration stations, customhouses, marine hospitals, quarantine stations, and other public buildings of the classes under the control of the Federal Works Agency in the States, Territories, and possessions of the United States, he is hereby authorized and directed to acquire, by purchase, condemnation, or otherwise, such sites and additions to sites as he may deem necessary, and to cause to be constructed thereon, and upon lands belonging to the Government conveniently located and available for the purpose (but exclusive of military or naval reservations), adequate and suitable buildings for any of the foregoing purposes, giving preference, where he considers conditions justify such action, to cases where sites for public buildings have prior to May 25, 1926, been acquired or authorized to be acquired, and to enlarge, remodel, and extend existing public buildings under the

control of the Federal Works Agency, and to purchase buildings, if found to be adequate, adaptable, and suitable for the purposes of sections 341, 342, 343, 344, 345, 346 and 347 of this title, together with the sites thereof, and to remodel, enlarge, or extend such buildings and provide proper approaches and other necessary improvements to the sites thereof. When a building is about to be constructed on a site acquired prior to May 25, 1926, and such site is found by the Federal Works Administrator to be unsuitable for its intended purpose, he is hereby further authorized and empowered to acquire a new site in lieu thereof by purchase, condemnation, exchange, or otherwise, and except in case of exchange to dispose of the present site by public sale and to execute the necessary quitclaim deed of conveyance: *Provided,* That in carrying into effect the provisions of sections 341, 342, 343, 344, 345, 346, and 347 of this title, insofar as relates to buildings to be used in whole or in part for postoffice purposes, the Federal Works Administrator, under regulations to be prescribed by him, shall act jointly with the Postmaster General in the selection of towns or cities in which buildings are to be constructed and the selection of sites therein: *Provided further,* That all sketches, plans, and estimates for buildings shall be approved by the Federal Works Administrator and the heads of the

executive departments which are to be located in such building.

The Federal Works Administrator is authorized to carry on the construction work herein authorized by contract, or otherwise, as he deems most advantageous to the United States.

* * * * *

STATEMENT

This is a proceeding brought by the United States to condemn land as a site for a United States Post Office, Customhouse, and Court building in the City of Cape Girardeau, Missouri. The site is a section of a city park on which are located a courthouse used by the Court of Common Pleas of Cape Girardeau County, a city library, a bandstand, and two memorial monuments. The petition, filed on November 22, 1941, sought condemnation of the land and all improvements thereon except the library building. (R. 5, 2.) The City and County of Cape Girardeau, the heirs of the donor of the park property and all others who might claim interest in the property were named defendants (R. 2–3). Mrs. Carmack, an heir of the donor of the park property, a taxpayer and a property owner in the City, was the only defendant to contest the petition. Her ancestor had, in 1820, quitclaimed the property to the inhabitants of the Town of Cape Girardeau forever with a proviso that the land should be appropriated for

public uses and should not become private property (R. 625, 107). The district court found that Mrs. Carmack did not have sufficient interest to maintain her defenses and entered a preliminary decree of condemnation on March 5, 1942.

Upon appeal by Mrs. Carmack, the decree was reversed. *Carmack* v. *United States*, 135 F. 2d 196. The court held that, conceding that Mrs. Carmack had no such interest as would entitle her to participate in compensation payable for the property, "she would seem to have more than the general interest of a nonproperty-owning inhabitant" and was entitled to urge her defenses. 135 F. 2d at 199. The court then held that Mrs. Carmack was entitled to be heard on the question of whether the Government had acted arbitrarily in selection of this property. The decree was reversed on the additional ground that the petition did not allege nor did the evidence show that the Federal Works Administrator and the Postmaster General had acted jointly in selecting the site.

After remand, on June 10, 1943, Postmaster General Frank C. Walker and Federal Works Administrator Philip B. Fleming, acting jointly, made a formal selection of this site (R. 86–87). Thereafter, a petition for condemnation, amended to allege the joint selection, was filed on August 14, 1943 (R. 27). Again all defendants defaulted except Mrs. Carmack who answered, denying the authority of the United States to condemn the

property and alleging that the selection was made arbitrarily and capriciously (R. 39–55, 634). A hearing was had on this question in April 1944 (R. 55). The United States presented documentary and oral evidence of the matters leading to the recommendation of this site by the Joint Committee, consisting of the Fourth Assistant Postmaster General and the Commissioner of Public Buildings of the Federal Works Agency, and the selection by the Postmaster General and Federal Works Administrator. Mrs. Carmack presented evidence to show that the choice of this site was unnecessary and not to the best interests of the city. Figuring prominently in the evidence of both parties was a proposal by the City of Cape Girardeau, which the United States accepted, to exchange the property involved in these proceedings for the present federal building (R. 63–76, 421–433). It appears that local governmental officials were strongly in favor of this exchange and that, at a special election, a majority of the voters had favored it (R. 18–21, 63–76, 92–93, 162–165, 175–176, 349–350, 417–434, 509, 620). The evidence also showed that the relative advantages and disadvantages of some twenty-two proposals were considered before the site was selected (R. 122, 145–146). Mrs. Carmack contended that the city lacked authority to convey this property (see *supra*, pp. 5–6), that, therefore, the agreement was illegal, and that condemnation by

the United States of the city property should not be permitted as a means of effecting an illegal agreement (R. 46–47).

On May 19, 1944, the district court filed its findings of fact, conclusions of law and a memorandum opinion wherein it ruled, in Mrs. Carmack's favor, and a decree dismissing the amended petition was thereafter entered (R. 632–636). The district court found that the public use for which the Government sought to acquire the property was not "superior in rank" to the existing use, that there was other property available better fitted for the Government's project, that failure to secure the site would not result in failure of the Government project, and that condemnation of the site involved would interfere with local governmental functions (R. 629–630). It concluded that the City officials had no power to exchange the property, that there was no necessity for taking the site in question and that the selection of the site by the Federal Works Administrator and the Postmaster General was "arbitrary, capricious and unnecessary" (R. 631–632).

The circuit court of appeals affirmed on the ground that statutory authority did not exist for the condemnation of property already devoted to a public use under the circumstances described, stating that it did not consider the question whether the selection was arbitrary or capricious (R. 659).

SPECIFICATION OF ERRORS TO BE URGED

The courts below erred:

1. In holding that the Federal Works Administrator and the Postmaster General lacked authority to condemn the lands in question.

2. In holding, in effect, that the question of necessity for the taking of the lands is a judicial question.

3. In holding that the court can review the good faith determination of the Federal Works Administrator and the Postmaster General as to the necessity for the taking.

4. In passing upon the authority of the City officials to exchange the property when that question was not in issue.

5. In construing the phrase arbitrary and capricious to mean unnecessary in the opinion of the court.

6. In holding that the authority to condemn land devoted to public use is more limited than that to condemn private property.

7. In holding that Iska Carmack had standing to contest the condemnation petition.

8. In dismissing the Government's petition in condemnation.

REASONS FOR GRANTING THE WRIT

1. The court below purported to rest its decision upon a construction of the statute relied upon for the taking, and it concluded that under this statute the administrative officers had no author-

ity to take the particular land involved. The Act of May 25, 1926, c. 380, sec. 1, 40 U. S. C. 341, authorizes the Federal Works Administrator to acquire by purchase or condemnation for post offices and other buildings "such sites and additions to sites as he may deem necessary", provided that the Federal Works Administrator and the Postmaster General act jointly in the selection of sites to be used for post offices. No limitation is placed upon the sites that may be selected for post offices nor is there anything in the legislative history of the Act to justify insertion of any restriction. Thus, the conclusion of the circuit court of appeals that the officers had no authority to select this particular site cannot be supported by reference to the legislative purpose, either as evidenced by the plain words of the statute or by other legislative material.

The decision of the court below is based upon findings of the trial court to the effect that there was no necessity for taking these lands because other sites were available for the post office, that the land was already being used for a governmental purpose of equal rank, that the taking would interfere with local governmental functions, that the land was held in trust for the specific purpose to which it was being devoted, and that the failure to secure this land would not result in failure of the federal project. But these and like considerations are the very factors which the

Administrator must consider in order to perform his statutory duty to "acquire, by purchase, condemnation, or otherwise, such sites * * * as he may deem necessary". See *supra*, p. 3. What the court below seems to have done, therefore, under the guise of statutory construction, is to intrude into the Administrator's function of determining the "necessity" for a particular taking.

It is well settled, however, that the necessity of taking particular lands is a legislative question and that the determination of this question by an administrative officer to whom the authority of selection has been delegated is not subject to judicial review, absent arbitrary or capricious action.[1] And the same rule is applicable when property already devoted to public use is condemned. In *United States* v. *Montana*, 134 F. 2d 194, 197 (C. C. A. 9), certiorari denied, 319 U. S. 772, a proceeding to condemn State-owned school lands, the court held "The federal statute [40 U.

[1] *Shoemaker* v. *United States*, 147 U. S. 282, 298; *Sears* v. *Akron*, 246 U. S. 242, 251; *Bragg* v. *Weaver*, 251 U. S. 57, 58; *Joslin Co.* v. *Providence*, 262 U. S. 668, 678; *Rindge Co.* v. *Los Angeles County*, 262 U. S. 700, 708–710; *United States* v. *243.22 Acres of Land*, 129 F. 2d 678 (C. C. A. 2), certiorari denied *sub nom. Lambert* v. *United States*, 317 U. S. 698; *United States* v. *Meyer*, 113 F. 2d 387 (C. C. A. 7), certiorari denied, 311 U. S. 706; *Barnidge* v. *United States*, 101 F. 2d 295 (C. C. A. 8); *United States* v. *Thelkeld*, 72 F. 2d 464 (C. C. A. 10), certiorari denied, 293 U. S. 620; *Atlantic Coast Line R. Co.* v. *Town of Sebring*, 12 F. 2d 679 (C. C. A. 5).

S. C. 257][2] does not require proof of 'necessity,' but makes that question depend solely on the 'opinion' of the federal officer. It is controlling here." Again, in *City of Oakland* v. *United States*, 124 F. 2d 959, 964 (C. C. A. 9), certiorari denied, 316 U. S. 679, the court stated that "the Congress has authorized the Secretary of War to determine the necessity for acquiring such property [a city dock area] and the extent of the taking."[3] The federal district courts have likewise refused to review the administrative determination that the condemnation of property devoted to some public use was necessary for the federal project.[4] In *United States* v. *Certain Parcels*

[2] That statute, the General Condemnation Act of August 1, 1888 provides:

"In every case in which the Secretary of the Treasury or any other officer of the Government has been or shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so."

[3] The Act invoked in that case authorized the Secretary of War to acquire lands "needed for the site, location, construction, or prosecution of works" for various military purposes. Act of July 2, 1917, c. 35, 40 Stat. 241, as amended 50 U. S. C. 171.

[4] *United States* v. *385 Acres of Land, Etc.*, 61 F. Supp. 746, 750 (E. D. Wis.); *United States* v. *.8677 Acre of Land in Richland County*, 42 F. Supp. 91, 96–97 (E. D. S. C.); *United States* v. *Eighty Acres of Land*, 26 F. Supp. 315 (E. D. Ill.); *United States* v. *Sixty Acres, More or Less, of Land*, 28 F. Supp. 368 (E. D. Ill.); *State of Missouri* v. *Union Electric Light & Power Co.*, 42 F. 2d 692 (E. D. Mo.); cf. *United States* v. *Forty Acres, More or Less, of Land, Etc.*, 24 F. Supp. 390 (D. Idaho).

of Land, 30 F. Supp. 372, 379 (D. Md.), and *United States* v. *Parcel of Land*, 32 F. Supp. 718, 721 (D. Del.), the courts held that property already devoted to a public use might be condemned as a site for a federal post office, and that the only question open on judicial review was whether the administrative selection was arbitrary and capricious.

The court below relied upon *United States* v. *Southern Power Co.*, 31 F. 2d 852 (C. C. A. 4) as establishing a different rule. See *Carmack* v. *United States*, 135 F. 2d 196, 200. But that case does not support the decision below, for as Judge Chesnut has pointed out (*United States* v. *Certain Parcels of Land*, 30 F. Supp. 372, 380 (D. Md.)):

> * * * The court was not there dealing with a case where the power of condemnation was directly resisted, but was rather concerned with what effect a prior condemnation, under congressional power to acquire lands for forestry purposes, had upon an existing right of way for power lines therethrough. Under the particular facts, arising out of prior negotiations between the contending parties, it was held among other things that it would not be equitable to find that the condemnation had destroyed the right of way for the power line. We are dealing here with an entirely different situation.

The *Southern Power* proceeding, moreover, rested on statutes merely authorizing the acquisition of lands for forest reserves; under such a provision, quite unlike that at bar, there was room for serious doubt as to whether the condemnation of a public utility right of way was authorized. 31 F. 2d at 856.[8] While the Fourth Circuit did refer to the rule that public service corporations or municipalities to whom the state power of eminent domain has been delegated, cannot, except by virtue of specific legislation, condemn land already devoted to public use, and suggested that the rule might well be applied to the sovereign in the peculiar situation before it, this rule generally "has no application to the sovereign itself. No case can be found where the rule was applied to a State or to the United States". *United States* v. *Parcel of Land,* 32 F. Supp. 718, 721; see also *United States* v. *Certain Parcels of Land,* 30 F. Supp. 372, 380 (D. Md.); *United States* v. *.8677 Acre of Land in Richland County,* 42 F. Supp. 91, 97. And the court below apparently did not completely adopt the rule referred to in the

[8] The court said: "Now, the purposes of the government in acquiring land for a forest reserve are primarily to protect the timber growing thereon and to guard against drainage conditions which are productive of floods. These purposes are not appreciably interfered with by the fact that the forest lands are crossed by rights of way of public utilities; and it is unreasonable to assume that Congress, in granting the right to acquire lands for forestry purposes, intended to grant also the right to condemn such rights of way. * * *"

Southern Power case because it assumed that if the courts were convinced that necessity did exist, the general authorization would be sufficient.

The decision in the instant case stands alone in requiring specific Congressional authorization to condemn property already devoted to some public use when, in the court's opinion, the taking is not necessary, and in thus unnecessarily burdening the exercise of the sovereign power. Cf. *United States* v. *City of Tiffin*, 190 Fed. 279 (C. C. N. D. Ohio). In the opinion below, the circuit court of appeals suggests that such a limitation is desirable to prevent "possible unfortunate and unnecessary conflicts between State and Federal authority" (R. 664). But here, the local authorities are strongly in favor of the government's project (R. 18–21, 63–76, 92–93, 162–165, 175–176, 417–434, 620), and the majority of voters in the town have approved the plan (R. 349–350, 421–433, 509). The possibility that in some other case federal officials might proceed without due regard to the interests of State or local governments might in the future present a question whether the action in a particular case was arbitrary or capricious, but it does not justify reading into the statute limitations which Congress has not imposed.

2. The selection of the site was not made in bad faith nor was it arbitrary and capricious. M. J. Deutsch, Site Inspector for the Post Office De-

partment, made an extensive investigation at Cape Girardeau, consideration being given to some twenty-two proposals (R. 168–204). His report recommending a site other than that chosen, was considered by a Joint Committee consisting of the Fourth Assistant Postmaster General and the Commisisoner of Public Buildings.* The Committee held hearings over an extended period of time at which anyone interested was allowed to appear (R. 120–126, 297, 482–483, 490, 519, 620–621) and many written reports, letters and opinions were submitted (R. 73–76, 164, 421–433, 483, 490, 509–514, 551–557, 620–621). H. Arthur Tucker, Associate Architect for the Federal Works Agency, investigated and reported on the site here involved (R. 551–557). After giving careful consideration to twenty-two proposals and the different recommendations, the Committee selected five sites for further consideration (R. 122, 145). This number was reduced to two, and then the site finally chosen was selected (R. 122, 145–146). This selection of the Committee was approved by the Postmaster General and the Federal Works Administrator (R. 86–87, 537).

In its declarations of law, the district court stated that this selection "under all the facts in this case, was arbitrary, capricious and unneces-

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*This Committee was established under regulations of the Postmaster General and the Federal Works Administrator (R. 148, 150, 532, 563).

sary" (R. 632). Arbitrary or capricious means in bad faith or according to one's own will or pleasure, without adequate determining principle.[7] Plainly, the selection made after thorough investigation and after careful consideration of the alternatives and of the relevant facts was not arbitrary or capricious. As its own language shows, the district court's conclusion was that, in its opinion, the taking was unnecessary (R. 632, 616–617). The declaration represents simply an attempt of the district court to substitute its judgment for that of the administrative officers as to necessity for the taking. Like the district court in *United States* v. *Merchants Transfer & Storage Co.*, 144 F. 2d 324, 326 (C. C. A. 9), "while protesting the contrary, the court substituted its judgment on the question of public necessity for that of the Secretary." The mere fact that other sites were available does not indicate arbitrary or capricious action. *United States* v. *Certain Parcels of Land*, 30 F. Supp. 372, 379 (D. Md.).

The circuit court of appeals stated that it did not pass upon the question whether the selection had been made capriciously or arbitrarily (R. 659). Nevertheless, it relied on the findings of the district court and particularly upon the assertion

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[7] *Fox Film Corporation* v. *Trumbull*, 7 F. 2d 715, 727 (D. Conn.); cf. *Puget Sound Power & Light Co.* v. *Public Utility District No. 1*, 123 F. 2d 286, 290 (C. C. A. 9); *United States* v. *Eighty Acres of Land*, 26 F. Supp. 315, 319 (E. D. Ill.).

that the City had no power to make the contract whereby it agreed to exchange the property condemned for the old federal building (R. 660, 662–663). Whether the City had power to convey the property in order to accomplish this exchange is not an issue in the present condemnation proceeding.* In *Woodville, Oklahoma* v. *United States* (C. C. A. 10), decided January 3, 1946,* the court, speaking of the acquisition by the Federal Government of land which had been restricted to use for railroad purposes, said that exercise of the power of eminent domain excused performance of the condition and that "no forfeiture of the estate resulted". In this condemnation proceeding the exchange agreement is material, if at all, only to the determination of compensation, a question not now in issue. Moreover, no reason is suggested why the local government does not have power to settle its claim in the condemnation proceeding by accepting such substitution—the best way of adjusting compensation in such cases. Cf. *Brown* v. *United States*, 263 U. S. 78; *Dohany* v. *Rogers*, 281 U. S. 362; *United States* v. *Miller*, 317 U. S. 369; *Jefferson County, etc.* v. *Tennessee Valley Authority*, 146 F. 2d 564 (C. C. A. 6), certiorari denied, 324 U. S. 871. Certainly, the fact, if it be true, that the local authorities lacked power to accomplish the exchange voluntarily does not

* Copies of this unreported opinion have been filed with the Clerk.

justify ignoring the advantages to the city, recognized by the local officials and by the majority of the voters, nor does it indicate that the Federal officers with all the facts before them acted arbitrarily or capriciously in selecting the site for condemnation.* (Cf. R. 616).

Moreover, the court's statement that the local officials lacked authority to accomplish the exchange is, at best, questionable. The decision in *Board of Regents for Normal School District No. 3* v. *Painter*, 102 Mo. 464, 14 S. W. 938, 940, relied upon by the court (R. 660), related to another tract included in the same deed as to which the use was specifically restricted to school purposes. The parcel here involved is simply limited to public use (R. 625). The Federal Post Office and Court House will certainly constitute a public use and the property exchanged will also be used for public purposes. This exchange was desirable from the standpoint of the local authorities because the present building lacks design and "has been so devoured by termites [that] the floors are propped up by struts and timber braces, to prevent them from falling through at possible cost of life" (R. 553, 188). It seems probable that under these circumstances the Missouri courts

*While the Fouth Assistant Postmaster General believed that the city did have authority to convey (R. 130–131), the present proceeding was instituted to avoid a dispute on this question (R. 91–92, 189–191, 203, 554).

would not hold that the exchange was void. Cf. *Woodville, Oklahoma* v. *United States* (C. C. A. 10), decided January 3, 1946 (see *supra*, note 8); *United States* v. *2.02 Acres of Land, More or Less, Etc.*, 51 F. Supp. 56, 60–61 (S. D. N. Y.).

3. The deeds here involved granted the land "forever" and there was no express provision for reverter or forfeiture if the use for public purposes should cease (R. 625, 106–107, 21–22). Hence, Mrs. Carmack would not, upon abandonment of such use, have an interest in the property. *Chouteau* v. *St. Louis*, 331 Mo. 781, 790, 55 S. W. 2d 299, 301; *Holekamp Lumber Co.* v. *State Highway Commission*, 173 S. W. 2d 938. The circuit court of appeals conceded, upon the first appeal, that Mrs. Carmack did not have such an interest as would permit her to share in compensation. Nevertheless, the court held that she did have standing to object to this proceeding, citing *Mott* v. *Morris*, 249 Mo. 137, 155 S. W. 434, which held that the heir of a grantor of property under a conditional deed had standing to invoke the aid of the court to enforce the condition. That decision is irrelevant here since the question whether the proposed exchange would have violated the restriction in the deed is not now in issue in this condemnation proceeding. See *supra*, p. 18.

Since she had no property interest in the land sought to be condemned, Mrs. Carmack's position would seem to be no different from that of other taxpayers or property owners in the city. Such

persons have no standing to object to condemnation of property of the city, absent a showing of special damage.[10] It is believed, therefore, that the circuit court of appeals erred in holding that Mrs. Carmack was entitled to litigate the questions which the courts below have decided in her favor.

4. The questions presented are of great general importance in the exercise of the power of eminent domain. The Act of 1926 is the general authorization for acquisition, by purchase or condemnation, of lands for many kinds of public buildings. The interpretation to be put upon this Act will have a substantial effect on the acquisition of public buildings under this statute, and will, indeed, have broader application with reference to other statutes using similar language. See *supra*, notes 2 and 3. The condemnation of property for use on a federal project, particularly in populated areas, includes, in a large majority of the cases, the taking of property devoted to public use for utility purposes or for streets, alleys,

[10] *C. M. Patten & Co.* v. *United States*, 61 F. 2d 970, 972 (C. C. A. 9), reversed as moot, 289 U. S. 705; *New York Central & H. R. R. Co. v. Yonkers*, 103 N. Y. Supp. 252; *Bilby* v. *District Court of Ninth Judicial Circuit*, 159 Okla. 268, 15 P. 2d 38; *cf. Massachusetts* v. *Mellon*, 262 U. S. 447; *United States* v. *Certain Parcels of Land*, 30 F. Supp. 372 (D. Md.); *George W. Armbruster, Jr., Inc.* v. *Wildwood*, 41 F. 2d 823, 830 (D. N. J.); *Benitez* v. *United States*, 141 F. 2d 943, 951 (C. C. A. 1); *Antonakas* v. *Anderson Chamber of Commerce*, 130 S. C. 215, 126 S. E. 35.

parks and the like. Substitution by the courts of their judgment for that of the federal officials as to whether a particular site should be selected would delay and embarrass execution of the public improvements, particularly if objections may be presented by persons not specially damaged by the project.

Except in a situation in which condemnation of particular property is indispensable to a federal project, the decision below would seem to require specific selection, by Act of Congress, of each site already put to a public use. Unless Congress is to be left in doubt as to what language, if any, is necessary or will serve to avoid this obviously impractical construction, review by this Court would seem to be essential.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted.

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